

TOBACCO CONTROL BOARD MEETING MINUTES

AUGUST 21, 2003

The Tobacco Control Board met on August 21, 2003, for its monthly meeting in the Main Street Mall building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 9:00 a.m. in Conference Room "C". There were 6 board members present, 1 – board member was absent – Dr. Neal Beaton, with Mr. Scott Wallace arriving after the meeting was in progress, and 1 – Open position.

The Chairman opened the meeting with a "Welcome" to those attending, and introduced Mr. Charlie Moulton, serving as Hearing Officer, and Ms. Lydia Williams, as Court Reporter.

The Chairman then requested a motion to approve the July 17, 2003, Board Meeting Minutes. A motion was made and approved with 5– Yes votes, 2 – Members absent and 1 – Open position.

Mr. Charlie Davis presented and asked for a blanket approval of the "New Retail Permit Applications issued from July 17, 2003, through August, 20, 2003". A motion was made and approved to approve the permits as listed with 5– Yes votes, 2 – Members absent and 1 – Open position.

The Director then presented a wholesale permit application due to change of ownership. McLane Company, Inc. dba Mc Lane Southwest of Temple, Texas was bought out by Geico Corporation with the ultimate parent company being Berkshire Hathway, Inc. He asked for approval as the application was complete. A motion was made to approve McLane's permit application for wholesale permits due to change of ownership with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Next he reviewed and asked for a blanket approval of the "Notice of Hearing and Offer of Settlement accepted by the permittee from July 17, 2003, through August 20, 2003". A motion was made and approved per his request with 6 – Yes votes, 1 - Member absent and 1 – Open position.

The meeting was then turned over to Mr. Moulton to conduct the Disciplinary Hearing segment of the agenda. Mr. Moulton called the following cases before the Board:

Case 2003-529
Permittee: Cheryl Turner
Permit #9743

The Smoke Connection
Greenwood, AR

VIOLATION: §26-57-248

Selling untaxed tobacco
Products – 1st Offense
\$3,850.00 fine
No suspension of permit

The business was represented by Ms. Cheryl Turner, the owner.

After all testimony was presented a motion was made and approved to find The Smoke Connection in violations of §26-57-248 having untaxed tobacco products with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

A second motion was made to reduce the fine to \$750.00 and issue a 3-day suspension of permit with the cigarettes being confiscated. The motion was withdrawn.

A third motion was made to fine The Smoke Connection \$750.00 and confiscate the cigarettes with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

The attorney for the Board, Ronald Darrow, presented the members with a List of Default Judgements. A motion was made to accept the List of Default Judgements, as presented, levy a \$250.00 maximum fine to all Sales to Minors cases, and levy the suggested fines on the other cases as listed with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Rose Bud Jim Dandy
Rose Bud, AR

VIOLATION: §5-27-227(a)(1) Sale to a Minor, 1st offense
\$200.00 fine

The company was not represented by anyone at the Hearing.

A motion was made and approved to find Rose Bud Jim Dandy in violation by Default Judgement of being in violation of §5-27-227(a)(1) with 5 – Yes votes, 1 – No vote, 1 – Member absent and 1 – Open position.

Cole & Stumbaugh Service Station
Cabot, AR

VIOLATION: §5-27-227(a)(1) Sale to a Minor, 1st offense
\$200.00 fine

The company was represented by co-owner Stewart Stumbaugh.

After all testimony was presented a motion was made to access a maximum fine of \$250.00 for selling to a minor and find them in violation of §5-27-227(a)(1) with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Mr. Moulton closed the Disciplinary Hearing and turned the meeting back over to the Chairman. Mr. Milburn asked Mr. Davis to continue with his "Address to the Board Members".

He reviewed the July 2003 Complaints Reports. The Board was brought up to date on the status of the open position replacing Ms. Marcia Newton-White.

Mr. Davis attended the AMPA 2003 Convention held in Springdale, Arkansas, on August 6th through 7th. He gave a presentation on “Sales to Minors”.

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He then asked Mr. Greg Sled, Enforcement Agent Supervisor, to give an update to the Board regarding the activity of the Enforcement Agents.

The Chairman asked Arnie Jochums, attorney for the Board, to bring them up to date on any activity in the Courts.

Mr. Peter Kumpe, with the Williams and Anderson law firm, asked the Board to take a vote on the petition presented on behalf of McLane Company at the July 17, 2003, board meeting seeking expedited declaration that the Arkansas Unfair Cigarette Sales Act, as amended by Arkansas Act 627 of 2003, is unconstitutional.

After discussion a motion was made and approved to deny the petition by Mc Lane Company seeking expedited declaration that the Arkansas Unfair Cigarette Sales Act as amended by Arkansas Act 627 of 2003 is unconstitutional with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Mr. Clifton Block of Griffin & Block, PLLC, presented a Petition for Rulemaking on behalf of McLane Company. The Board agreed to address this petition at the September 18, 2003, board meeting in order to give the member's time to read the petition before taking any action.

Next the Board discussed moving the meeting date for the Tobacco Control Board monthly meetings. It was agreed the meetings would be moved to the first Thursday of each month with the exception of January 2004, which will be the 2nd Thursday due to the New Year's Day holiday. The Board will continue to meet on the third Thursday through the remainder of 2003. A meeting date schedule is always available through the agency office.

The Chairman then opened the meeting for "Board Member Discussion" followed by "Comments from the Audience".

Announcements included the next meeting date of September 18, 2003.

All business of the Board had been conducted and the meeting was adjourned.

Minutes prepared by _____

Janis L. Campbell

September 16, 2003

July 22, 2003